

304.15-715 Requirements for viatical settlement contracts.

- (1) A viatical settlement provider entering into a viatical settlement contract with any person shall first obtain:
 - (a) If the viator is insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and
 - (b) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, life insurance agent, or viatical settlement broker and, if the policy was issued less than two (2) years from the date of application for a viatical settlement contract, to the insurance company that issued the policy.
- (2) The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider or viatical settlement broker not later than thirty (30) calendar days after the date the request is received. The request for verification of coverage shall be made on a form approved by the executive director. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract or possible fraud, and shall provide sufficient detail of all reasons for the investigation to the viatical settlement provider or viatical settlement broker.
- (3) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that he or she has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the policy, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, that the terminal or chronic illness or condition was diagnosed after the policy was issued.
- (4) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.
- (5) All viatical settlement contracts entered into in this state shall contain an unconditional right to rescind a viatical settlement contract before the earlier of thirty (30) calendar days after the date it is executed or fifteen (15) calendar days after the date of receipt of the proceeds of the viatical settlement contract by the viator. If exercised by the viator, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the viatical settlement provider. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider. The viatical settlement provider shall effectuate the change of ownership of the policy or certificate to the viator immediately upon effective rescission by the viator.

- (6) The independent third-party trustee shall transfer the proceeds that are due to the viator within two (2) business days upon receipt of acknowledgment of the transfer of ownership from the insurer.
- (7) Failure to tender consideration to the viator for the viatical settlement contract by the date disclosed renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.
- (8) Contacts with the insured for the purpose of determining the health status of the insured after the execution of the viatical settlement contract shall only be made by the viatical settlement provider or its authorized representative and shall be limited to once every three (3) months for an insured with a life expectancy of more than one (1) year, and to no more than once per month for an insured with a life expectancy of one (1) year or less. The viatical settlement provider shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers shall be responsible for the actions of their authorized representatives.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 58, sec. 10, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 472, sec. 4, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 403, sec. 5, effective July 15, 1998.

Legislative Research Commission Note (6/20/2005). Under the authority of KRS 7.136(1)(h), during codification a manifest clerical or typographical error occurring in 2005 Ky. Acts ch. 58, sec. 10(5) has been corrected. It is clear from the context and legislative history of the Act that the words "and within the rescission period" were misplaced within the sentence in which they occur, and the correct placement within the sentence has been effectuated during codification.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.